

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BECK SIMMONS LLC, individually and)	
on behalf of all other similarly-situated,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 4:14-cv-01161-HEA
)	
FRANCOTYP-POSTALIA, INC.,)	
)	
Defendant.)	

DEFENDANT FRANCOTYP-POSTALIA, INC.'S MOTION TO STAY

Defendant Francotyp-Postalia, Inc. ("FP"), by its attorneys, hereby moves for the Court to stay this case pending (1) the disposition of the related pending petitions for declaratory judgment filed with the Federal Communications Commission ("FCC") requesting that the FCC clarify its regulations relating to the Telephone Consumer Protection Act ("TCPA"); (2) the disposition of the administrative petition that FP is preparing to file with the FCC; and (3) any rulings by the Federal Court of Appeals appealing from the FCC's final dispositions of the petitions. In support of this motion, FP states as follows:

1. Plaintiff filed a class action complaint alleging that FP violated the TCPA by, among other things, faxing or having an agent fax advertisements without a proper opt-out notice, as allegedly required by 47 C.F.R. § 64.1200. (Plaintiff's Amended Complaint, Doc. 14, ¶ 34 (seeking to recover on behalf of all recipients of faxes sent by FP "which did not display a proper opt out notice").)

2. Plaintiff's claim based upon a failure to include an opt-out notice on *solicited* fax advertisements, however, runs afoul of the statutory authority granted to the FCC under the TCPA.

3. The FCC is currently considering over twenty petitions requesting that the FCC clarify its regulations to confirm that the failure to include an opt-out notice on solicited fax advertisements runs does not violate the TCPA (the “Related Petitions”). FP also is preparing to file a petition requesting the same relief from the FCC.

4. As set forth in FP’s Memorandum in Support of this motion, several courts have stayed cases involving TCPA claims for failing to include an opt-out notice on a solicited fax advertisement pending the FCC’s resolution of the Related Petitions.

5. The FCC’s ruling on the Related Petitions pending before it and the one that FP is preparing to file will significantly impact several issues in this case, including whether certain of Plaintiff’s claims are viable, the defenses that FP is able to present, the scope of discovery and the class certification process. Both the Court’s and the parties’ resources should be conserved by waiting to proceed until after the FCC has resolved the issues relating to the regulations that it promulgated under the TCPA, so that efforts are not duplicated or found wholly unnecessary later.

6. In support of this motion, FP is filing herewith a Memorandum in Support and therefore incorporates herein the memorandum and the exhibit attached thereto.

WHEREFORE, for the reasons stated herein and in its Memorandum in Support, Defendant Francotyp-Postalia, Inc. requests that the Court enter an order staying this case pending (1) the disposition of the related pending TCPA petitions for declaratory judgment filed with the FCC; (2) the disposition of the administrative petition that FP is preparing to file with the FCC; and (3) any rulings by the Federal Court of Appeals appealing from the FCC’s final dispositions of the petitions.

HEPLERBROOM LLC

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ATTORNEYS FOR **DEFENDANT**

PROOF OF SERVICE

I hereby certify that I electronically filed on this 9th day of September, 2014, the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- Max Margulis; ATTORNEY FOR **PLAINTIFF**

and mailed by first class mail, postage prepaid, and by depositing in a U.S. Post Office mail box, a copy of the document to the following non-registered participant:

ATTORNEY FOR **PLAINTIFF**

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/s/ Michael L. Young